STATE OF CALIFORNIA GRAY DAVIS, GOVERNOR

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
SANTA ROSA LEGAL SECTION
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H. THOMAS CADELL, *OF COUNSEL*

February 3, 2003

Randall J. Krause, Esq.
377 West Fallbrook Ave., Suite 102
Fresno, CA 93711

Re: **Farm Labor Contractor License Requirements** (00269)

Dear Mr. Krause:

Your letter, addressed to Arthur Lujan, State Labor Commissioner, regarding the impact of AB 423[1] on your clients has been assigned to this office for response.

As you point out in your letter, AB 423 sets forth certain obligations imposed upon California growers to inspect and verify the validity of the licensure of any person they hire in the capacity of a farm labor contractor as that term is defined in the law. (See Labor Code §§ 1682 through 1682.4) Your clients' concerns chiefly involve the definition of the term "farm labor contractor". They fear that they may "unwittingly" employ a person or entity who purports to be a "farm manager", a "vineyard management company" or a "packing house", and employ those persons or entities in duties which require them to be licensed as farm labor contractors.

Initially, we should point out that neither AB 423 (nor its counterpart, SB 1125) amended the definition of farm labor contractor. Consequently, those persons or entities engaged in duties which require licensure as a farm labor contractor were under the same requirements before the bills were adopted as they were after that date.

The Labor Commissioner has addressed the issue of the broad definition of farm labor contractor in a number of letters over the years. The question has been raised in regard to operations described as "custom harvesting", "vineyard management", and various other appellations. The name given to the operation is not

[1]When codified, AB 423 amended Labor Code §§ 1695.7 and 1698 and added §§ 1695.8, 1695.9, 1696.8, and 1697.3

the determinative factor, of course; it is the duties performed by the person or entity which determine the status.

Labor Code § 1682[2] defines the terms used in the Farm Labor Contractors Law. That section provides, *inter alia*:

> As used in this chapter:
> (a) "Person" includes any individual, firm, partnership, association, limited liability company, or corporation.
> (b) "Farm labor contractor" designates any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to these persons.
> (c) "License" means a license issued by the Labor Commissioner to carry on the business, activities, or operations of a farm labor contractor under this chapter.
> (d) "Licensee" means a farm labor contractor who holds a valid and unrevoked license under this chapter.
> (e) "Fee" shall mean (1) the difference between the amount received by a labor contractor and the amount paid out by him or her to persons employed to render personal services to, for or under the direction of a third person; (2) any valuable consideration received or to be received by a farm labor contractor for or in connection with any of the services described above, and shall include the difference between any amount received or to be received by him or her, and the amount paid out by him or her, for or in connection with the rendering of such services.

It is instructive to note that the Legislature felt it necessary to provide an exclusion from the licensing requirements for those operating a “commercial packing house”; but limited the exception to enterprises “engaged in <u>both</u> the harvesting and the <u>packing</u> of <u>citrus</u> <u>fruit</u> <u>or</u> <u>soft</u> <u>fruit</u> for a client or customer.” (Labor Code § 1682.4, emphasis added) The Legislature obviously concluded that the broad definition of “farm labor contractor” would subsume within it the operation of commercial packing houses. In addition, Labor Code § 1682.5 excludes “nonprofit” corporations

[2]Labor Code § 1682.3 defines the term “day hauler” and includes those operating in that capacity in the definition of farm labor contractor. Labor Code § 1682.4 excludes “commercial packing house[s]” as discussed above.

or organizations performing services for its members; and, of course, also excludes individuals who are actually employees and not independent contractors.

In your letter, you describe what you refer to as "farm manager" or a "vineyard management company[3]" and ask if these operations are included within the definition of farm labor contractor. You describe the farm manager as one who:

> "makes all or substantially all the day-to-day decisions related to production and cultural practices including (1) when, what, and how to prune, (2) when, what, and how to thin, and (3) when, what, and how to pick. ¶ Finally, the farm manager secures the labor necessary to perform the work on the farm. sometimes, the farm manager hires all the employees directly. sometimes, the farm manager hires a professional farm labor contractor to supply the workers. sometimes, the farm manager hires some of the employees directly and also obtains workers from a farm labor contractor."

In a letter dated May 27, 1994[4], the Division defined the term Farm Labor Contractor in relation to a "Vineyard Management Agreement" which:

> "...purports to create some sort of 'independent contractor' relationship between the 'owner' of the land and the individual referred to as the 'manager'. The agreement provides that the Manager is to furnish the labor, equipment, materials and supplies and to do and perform all acts and services reasonably necessary to farm the vineyards in a good and farmer-like manner. The Manager is to consult with the owner and keep the owner advised on a monthly basis regarding the progress of the vineyards and all significant actions taken by the Manager during the growing season.
>
> "The 'Agreement' also provides that the Manager is to pay all reasonable costs for, among other things, labor, materials, supplies, and transportation. Owner is obligated to "fully reimburse Manager for all actual costs" incurred in performing

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[3]You state that the terms are used interchangeably and you do not provide duties for the vineyard management company different from those you attribute to the farm manager. We assume, therefore, that the terms cover the same duties.

[4]The letter was addressed to Spencer H. Hipp of the firm of Littler Mendelson at the firm's Fresno office. A copy of that letter, along with one on the same subject dated November 18, 1996, directed to Terrence R. O'Connor, an attorney with Western Legal Associates in Salinas, California, are attached hereto for your information.

> his duties. In addition, Owner is to pay Manager 'administrative costs and management fee' based on the number of acres managed."

We assume that the arrangements you describe would broadly follow the same format. There would have to be an agreement between the manager and the owner, and, likely, the agreement would have to provide that the manager is to provide the labor, equipment, materials and supplies and perform the farming duties. Whether the manager would have to consult with the owner and keep the owner advised on a monthly basis would not, in the view of the Division, have any bearing on the issue of whether the person or entity was a farm labor contractor.

As the 1994 letter points out, the California courts have concluded that the provisions of the Farm Labor Contracting Act must be liberally construed to protect the farm laborer. *Johns v. Ward* (1959) 170 Cal.App.2d 780, 786.

The 1994 letter is a statement of the DLSE enforcement policy as it has historically been applied and continues to be applied[5]. As that letter stated:

> "Labor Code § 1682(b) defines a farm labor contractor as anyone who, for a <u>fee</u>, employs workers to render personal services in connection with the production of any farm products 'to, for, or under the direction' of a third person. Note that it is not necessary, under this definition, for the farm labor contractor to be under the direction of the grower. It is simply necessary that the contractor employ workers in connection with the production of any farm products <u>for</u> the owner or any third person.
>
> "The term 'fee' is defined at subsection (c) and has a broad meaning including the difference between the amount received by a labor contractor and the amount paid out by him to persons employed to render personal services and, further, includes any amount paid in connection with the rendering of such services."

In the description you submit, the manager is required to direct the activities of the workers; hire and fire the workers, and pay the wages of the workers. Your description does not contend that the manager acquires any ownership interest in the land or the crop; but assumes that the manager is only involved in

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[5]The 1994 amendment of the section simply extended the definition of the word "person" within the meaning of the statute but made no substantive change to the definition of farm labor contractor.

the planting and cultivating of the crop and the costs involved in those services (which include the costs of employing the workers).

Based on the facts you have submitted, a farm manager you described would be required to be licensed as a farm labor contractor. Since we fail to perceive any difference between the term farm labor contractor and vineyard management company as you describe them, the vineyard management company would also be required to have a license.

You follow up with a scenario wherein the facts are as stated above, but the vineyard management company is also a grape grower in California which handles all operations for another wine grower while using its own employees, managers, etc.

Again, this question has been addressed in the past. In a letter dated March 24, 1997[6], written to James L. Valentine, a CPA in the city of Los Banos, California, the DLSE responded to the question of whether, in a situation where three growers have agreed that one of the entities employ all of the workers and perform all of the operations on the land owned by all of the growers, the employing entity must be licensed as a farm labor contractor. The DLSE opined that the employing entity would fall into the category of farm labor contractor inasmuch as that entity would "employ workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person," to wit, the other two entities.

It does not matter that the employer may also employ those same workers to perform services on his own land, the important consideration is the category of that employer when he uses those employees to perform the described services on the land of a third person or under the direction of a third person. As the court in the case of *Johns v. Ward, supra*, noted, it is the protection of the farm laborer that is the guiding factor. It would not matter to the worker employed in performing the duties what the employer's primary business is; the employee is only interested in the protections available while performing the services covered by the law.

Next, you ask whether a grower of agricultural products who uses the labor provided by a packing house (which does not meet the definition of an excluded packing house contained in Labor Code § 1682.4) and/of a winery and/or a "custom harvester" in order to perform other work on the farm or vineyard, must treat those entities as farm labor contractors. The answer is yes as to each

[6]We are attaching a copy of that letter hereto in addition to the other letters described above.

of the categories you listed.

The nomenclature given to the operation or entity or the primary business of the operation or entity is not the determining factor. The question, bottom line, is whether the entity performs any of the duties described in Labor Code § 1682(b) for a fee. If a fee is paid and there is no specific exclusion contained in the statutory scheme, the entity is a farm labor contractor and must have a license.

We hope this adequately addresses the issues you raised in your letter. Thank you for your interest in California labor law.

Yours truly,

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